



# COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
VALLEY REGIONAL OFFICE

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Matthew J. Strickler  
Secretary of Natural Resources

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Director

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Regional Director

**STATE WATER CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
NELSON COUNTY SERVICE AUTHORITY  
FOR  
SCHUYLER STP  
VPDES Permit No. VA0026484**

## SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the State Water Control Board and Nelson County Service Authority regarding the Schuyler STP for the purpose of resolving certain violations of the State Water Control Law, Regulations, the applicable permit.

## SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

4. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10
5. "Discharge of a pollutant" when used with reference to the requirements of the VPDES permit program means:
  - (a) Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
  - (b) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
6. "DMR" means Discharge Monitoring Report.
7. "Effluent" means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
8. "Facility" or "Plant" means the Schuyler STP located at 5996 Rockfish River Road, Schuyler, Virginia, which treats and discharges treated sewage and other municipal wastes, for the residents and businesses of NCSA.
9. "NCSA" means Nelson County Service Authority, an authority created pursuant to the Virginia Water and Waste Authorities Act, Va. Code § 15.2-5100 *et seq.* NCSA is a "person" within the meaning of Va. Code § 62.1-44.3.
10. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
11. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
12. "Permit" means VPDES Permit No. VA0026484, which was issued under the State Water Control Law and the Regulation to NCSA on January 1, 2017 and which expires on December 31, 2021.
13. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
14. "Pollution" means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present

or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.

15. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
16. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
17. “State waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
18. “Va. Code” means the Code of Virginia (1950), as amended.
19. “VAC” means the Virginia Administrative Code.
20. “VPDES” means Virginia Pollutant Discharge Elimination System.
21. “Warning Letter” or “WL” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

**SECTION C: Findings of Fact and Conclusions of Law**

1. NCSA owns and operates the Facility. The Permit allows NCSA to discharge treated sewage and other municipal wastes from the Plant, to Ivy Creek, in compliance with the terms and conditions of the Permit. Ivy Creek is located in the James River Basin.
2. DEQ received DMRs for the months of December 2017, January 2018, April 2018, and May 2018, on which NCSA reported the following results:

Month	Outfall	Parameter	Concentration/Loading	Reported	Legal Requirement
December 2017	001	120 E.coli	Concentration Average	151.21 n/CML	126 n/CML
January 2018	001	120 E.coli	Concentration Average	≥256.52 n/CML	126 n/CML
January 2018	001	003 BOD5	Concentration Average	40 mg/L	30 mg/L
April 2018	001	120 E.coli	Concentration Average	>49.50 n/CML	126 n/CML
May 2018	001	120 E.coli	Concentration Average	>54.94 n/CML	126 n/CML

3. On January 19, 2018, DEQ received NCSA’s DMR for the annual Nutrient Monitoring:

Month	Outfall	Parameter	Concentration /Loading	Reported	Legal Requirement
December 2017	001	012 Phosphorus, Tot. (as P)	Concentration Maximum	Unreported	NL
December 2017	001	013-Nitrogen, Tot. (as N)	Concentration Maximum	Unreported	NL
December 2017	001	068-TKN (N-KJEL)	Concentration Maximum	Unreported	NL
December 2017	001	389-Nitrite+Nitrate-N, Tot.	Concentration Maximum	Unreported	NL

4. DEQ issued WLs to NCSA for effluent violations and lacking data on the following dates:
  - a. February 16, 2018, WL No. W2018-02-V-1034;
  - b. March 20, 2018, WL No. W2018-03-V-1003; and
  - c. June 15, 2018, WL No. W2018-06-V-1001.
  
5. On February 27, 2018, DEQ staff performed a Compliance Inspection of the Facility, noting that the chlorination feed locations differed since the previous compliance inspection. DEQ requested information regarding the flow-pacing capacity of normal Facility flow, and how high flow feed operations for chlorination were handled to ensure adequate contact time for disinfection. NCSA submitted documentation to DEQ on April 23, 2018, detailing that the constant chlorine feed would remain at the head of the contact tank, and the flow paced chlorine feed for high flows would be placed at the head of the clarifier.
  
6. On July 13, 2018, DEQ issued NOV No. W2018-07-V-001 to NCSA for the alleged violations of the Permit as referenced above in paragraphs 2 and 3.
  
7. On August 6, 2018, DEQ staff met with NCSA representatives to review Facility operations and conditions at the Facility. NCSA explained that the system was aging, and that several repairs were completed in the past year, as a result of pipe failure/separation. DEQ scheduled a follow up meeting with NCSA and their consultant as a result of discussion on site regarding the Facility's current condition.
  
8. On August 14, 2018, DEQ staff met NCSA representatives and their consultant, CHA, to discuss options for the Facility. NCSA explained that the contact time issue with regards to adequate disinfection had been repaired. Additionally, several options were discussed from Facility replacement and repair, to a move towards a drip septic system for service, since the population served by this Facility is so low, at 150. At the end of the meeting, NCSA agreed to submit a Preliminary Engineering Report (PER) by April 30, 2019
  
9. In January 2019, February 2019, and March 2019, NCSA reported that the Facility's flow value was greater than 95% of the design: 0.026 MGD, 0.035 MGD, and 0.029 MGD.
  
10. On May 1, 2019, NCSA's consultant submitted a PER detailing the complete replacement of the Facility's treatment system; included, were the timelines for installation which have been incorporated into the Appendix of this Order.

11. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
12. Permit Part I.A requires that the Permittee sample Outfall 001 and meet Permit effluent limitations.
13. Permit Part II.C.1 states that: “The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after the required monitoring period.”
14. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
15. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
16. Ivy Creek is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
17. Based on the results of the February 27, 2018 inspection, the August 6, 2018 and August 14, 2018 meetings, and the DMRs submitted for the months of December 2017, January 2018, April 2018, and May 2018, the Board concludes that NCSA has violated the Permit, Va. Code 62.1-44.5, and 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Facility while concurrently failing to comply with the conditions of the Permit, as described in paragraph C(2) through C(10), above.
18. In order for NCSA to return to compliance, DEQ staff and representatives of NCSA have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders NCSA, and NCSA agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$1,575 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control

Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

NCSA shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, NCSA shall be liable for attorneys' fees of 30% of the amount outstanding.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of NCSA for good cause shown by NCSA, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. W2018-07-V-0001 dated July 13, 2018, WL No. W2018-02-V-1034 dated February 16, 2018, WL No. W2018-03-V-1003 dated March 20, 2018, and WL No. W2018-06-V-1001 dated June 15, 2018. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, NCSA admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. NCSA consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. NCSA declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by NCSA to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect

appropriate enforcement actions by any other federal, state, or local regulatory authority.

7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. NCSA shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. NCSA shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. NCSA shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of any such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

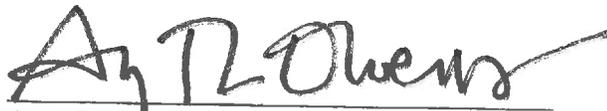
9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and NCSA. Nevertheless, NCSA agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after NCSA has completed all of the requirements of the Order;
  - b. NCSA petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or

- c. The Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to NCSA.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve NCSA from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by NCSA and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of NCSA certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind NCSA to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of NCSA.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, NCSA voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 19<sup>th</sup> day of September, 2019.



Amy T. Owens, Regional Director  
Department of Environmental Quality

## APPENDIX A SCHEDULE OF COMPLIANCE

### Plant Upgrades:

NCSA plans to construct a new treatment plant (Plant) at the Facility, be installing a small package plant.

1. By July 1, 2020, NCSA shall secure funding to construct the replacement of the Facility, and close the existing treatment works.
2. By July 31, 2021, NCSA shall advertise for bids for the Facility upgrade.
3. By, December 1, 2021, NCSA shall submit to DEQ a Certificate to Construct (“CTC”) application for review and approval.
4. By December 30, 2022, NCSA shall complete construction of the Plant upgrade, obtain a Certification to Operate (“CTO”), and update the Facility’s O&M Manual to incorporate operation and maintenance procedures for the new treatment unit(s).

### Closure Plan:

5. Within 90 days of the issuance of the CTC, NCSA shall submit to DEQ for review and approval, a closure plan to close the original treatment units at the Facility. The closure plan shall include an anticipated timeline for completion. The closure plan shall be incorporated and enforceable as part of this Order upon DEQ’s approval
6. Within 90 days of the issuance of the CTO, but by no later than March 31, 2023, NCSA shall complete the closure of the original treatment Facility.

### General Requirements

7. NCSA shall submit quarterly progress reports to DEQ, with the first report being due **October 10, 2019**. Subsequent progress reports will be due **January 10, April 10, July 10, and October 10**, along with the Facility’s Discharge Monitoring Report, until the cancellation of this Order. The quarterly progress reports shall contain:
  - a. A summary of all work completed since the previous progress report in accordance with this Order;
  - b. A projection of the work to be completed during the upcoming quarterly period in accordance with this Order; and
  - c. A statement regarding any anticipated problems in complying with this Order.
8. No later than **14 days** following a date identified in the above schedule of compliance NCSA shall submit to DEQ’s Valley Regional Office a written notice of compliance or

noncompliance with the scheduled item. In the case of noncompliance, the notice shall include the cause of noncompliance, any remedial actions taken, and the probability of meeting the next scheduled item.

9. **DEQ Contact**

NCSA shall submit all requirements of Appendix A of this Order to:

Tiffany R. Severs  
Enforcement Team Leader  
VA DEQ, Valley Regional Office  
4411 Early Road, Harrisonburg, Virginia  
540-574-7859  
540-574-7878  
tiffany.severs@deq.virginia.gov

Nelson County Service Authority voluntarily agrees to the issuance of this Order.

Date: July 22, 2019 By: *George T. Miller, Jr.* (Person), Executive Director (Title)  
Nelson County Service Authority

Commonwealth of Virginia  
City/County of Nelson

The foregoing document was signed and acknowledged before me this 22<sup>nd</sup> day of July, 2019, by George T. Miller, Jr. who is Executive Director of Nelson County Service Authority on behalf of the Authority.

*Jennifer Tyree Fitzgerald*  
Notary Public

7125843  
Registration No.

My commission expires: 9/30/2019

Notary seal:

